

Minutes of
Follow-up bilateral meeting with The Netherlands
23 June 2021, 14:00-17:00, Video conference in Teams

Participants:

[REDACTED]

The meeting followed the pre-agreed agenda that included questions raised by the EC and by the NL authorities in advance of the meeting. The background of the EC questions is included in Annex 1, while Annexes 2 and 3 include the background of questions from the NL.

I) [...]

II) Other policy and funding issues

A) Nitrogen related measures and funding (follow up of PAN)

Question: Please provide a summary of the current state of play of the legislative framework, measures and targets for nature restoration, including funding from national budget (if relevant, complementarity with CAP).

Discussions during the meeting on this topic are detailed under point IV.

[...]

III) [...]

IV) Other issues proposed by the NL

A) The new measures the NL plans or put in place in order to resolve the nitrogen issues

The NL presented the new Law on Structural Approach Nitrogen (SAN) that was adopted by the Parliament in March 2021 entering into force on 1 July 2021 (see Annex 2 to the minutes “**Factsheet Natura 2000 and nitrogen**” and the ppt. sent prior to the meeting). This law addressing nitrogen reduction and nature improvement will be operationalized through the nitrogen reduction and nature improvement program. This program creates the framework for further implementation and is now in development.

The main objective of the new SAN is to **contribute to conditions required for favourable conservation status in all Natura 2000 sites. It builds on 3 pillars:**

- **Nitrogen reduction measures and introduction of target values**
- **Conservation and restoration of nature, and**
- **Spatial integration policies**

Monitoring system will ensure that goals are reached and that corrective/additional measures are taken if needed.

Legally binding values have been set for 2025, 2030 and 2035.

Legally binding target values nitrogen reduction			
	Target values	National emission reduction (kton/yr)	Deposition Reduction (mol/ha/yr)
2018	22% <CDL	-	-
2025	40% <CDL	10-15%	100 – 150 mol/ha/yr
2030	50% <CDL	26%	255 mol/ha/yr
2035	74% <CDL	50%	485 mol/ha/yr

Exemptions have been established for construction sector, i.e. temporary emissions are exempted.

Programme of measures is ongoing at national level and tailor made plans will be prepared by provinces by 2023.

Implementation on the two channels of nitrogen reduction and nature improvement is planned in 2 phases. Subsidies are already available for provinces for Phase 1 (2021-2022), while in parallel nature restoration plans are being prepared by the provinces for Phase 2 (2023-2030).

Substantial national financing is committed for the period till 2030: in addition to the 0.8 billion EUR provided earlier, another 5 billion EUR was ensured in 2020 (3 bn for nature improvement + 2 bn for N reduction) + an additional 1 billion from 2024.

Discussions during the meeting:

Q (of COM): will N deposition continue to deteriorate the sites? Will you be able to halt deterioration of N sensitive habitats?

A (by NL): Critical Deposition Value will still be exceeded in several sites. The second pillar on nature conservation/restoration will ensure that while reducing N deposition, the areas will be preserved. It is a process that will take years for reducing deposition.

Q: We understand the restoration will focus on the most vulnerable areas? Will there be also CAP funding used?

A: the CAP SP is being developed, to be seen how that will be used for this purpose.

Q: national emission targets are set. How is it ensured that deposition reduction occurs in the areas with highest needs?

A: we are working on emission ceilings per province to operationalise the national targets.

Q: What nature restoration measures are there? What is the interaction between the two pillars of reduction and restoration?

A: 3 bn will be spent based on plans of the province that would prioritise. Restoration measures will be more needed in the areas where N deposition is still exceeded. Types of measures are diverse: extra management, hydrological measures (improving water table), measures counteracting the most acidic situations in soil and water, second mowing of the vegetation, more intensive grazing, etc. combined with N reduction measures (e.g. buy up of livestock in the areas surrounding N2000 areas), etc.

Measures can be implemented inside and outside Natura 2000 sites.

Q: will the budget be distributed in proportion of effort and urgency?

A: available resources will be distributed among the provinces and less funds will go to areas with few sensitive habitats.

Conclusion: the COM expects that N emissions reduction will be accelerated as much as possible, as such measures will need a long time to deliver. The restoration and protection targets of the EU Biodiversity Strategy 2030 are also relevant in this context, incl. the upcoming Nature Restoration Law that may trigger revisiting the issue and boosting the ambition foreseen now.

The broader political question of overall environmental impact of very intensive livestock farming should be tackled by the new government. The COM will continue to monitor closely the situation as this is a huge environmental challenge for the NL.

B) Updating conservation objectives

The NL sent in advance of the meeting a set of questions about the following three topics together with the related background to provide sufficient context (see Annexes 3A-B-C)

1) Flexibility in the Natura 2000-framework (see Annex 3A)

Questions for discussion:

- Is it correct that article 6(2) requires Member States to at least maintain the Annex I habitats present at a site at the level at time of entry into force?
- Does this requirement set a minimum standard for the ambition site specific conservation objectives?
- Does the commission agree that measures required to prevent deterioration of each habitat present may sometimes be at odds with the ambition to make a site contribute to FCS in the best possible way?
- What options does the Commission see for maintenance objectives, in order to anticipate a better ecological potential to contribute to FCS?

Discussions during the meeting:

COM noted that we have discussed already on previous occasions how to address conflicting objectives, decline of one protected feature in a site against improvement of another in the same site. COM has said and can confirm again that it is reasonable that in case of naturalizing an area such conflicts may arise (freshwater vs marine habitats as discussed for the site Krammer-Volkerak). It is for the NL to choose habitat/species that are priorities for each site. If the measures necessary to protect/restore the habitat/species chosen as priorities in a site result in the deterioration of another protected feature in the same site and if there is still the possibility to achieve Favourable Conservation Status for the deteriorating feature (on that site) at biogeographical level this would not be interpreted as a breach of Article 6(2) HD.

NL replied that in light of climate change such situations may occur more often and asked whether priorities have to be chosen at the time of designation or whether this can also be done at later stage. What is the relation of this to setting conservation objectives?

COM stated that setting objectives and drafting management plans should take such considerations into account. The minimum objective for the protected features in a site should be maintaining the status quo. If this is not possible for the reasons discussed above, the best possible status should be maintained.

The ECJ clarified that conservation objectives are necessary for the purpose of setting priorities and must therefore precede the setting of those priorities¹. In specific cases it may be justified to revise priorities and conservation objectives due to unforeseeable developments. Whenever conservation objectives do not ensure at least the maintenance of the status quo for a certain protected habitat/species, it is crucial to prove that deterioration is unavoidable. These are normally exceptional cases.

NL stated there are stable sites, but also some where climate change results in more dynamic changes, that require adapted measures where one has to see what is considered as inevitable, what is the proportionality of measures to prevent deterioration.

The COM stated that climate change is taken into account in the Directive, as it can be considered as a natural phenomenon that cannot be countered.

2) Proportionality of measures (see Annex 3B)

Questions for discussion:

¹ C-849/19, paras 50 and 53.

- Does the Commission see objections to an application 'by analogy of 6(4)' in a situation where preventative measures under article 6(2) may be seen as not appropriate or proportional?

Discussions during the meeting:

COM stated that in cases such as the one described in Annex 3B Art 6(3) and 6(4) should be applied and not 6(2). Even in the case of an ongoing drinking water abstraction, the procedure under Article 6(3) could be triggered by the review of the relevant permit.

So if the activity of drinking water abstraction leads to negative impact, but IROPI and no alternatives can be demonstrated, measures to compensate for the deterioration can be applied, under Article 6(4).

The interpretation of Article 6(2) as proposed by the NL cannot be agreed. COM noted that the Grune liga case mentioned in the background document was about ex-post application of Article 6(4) and not 6(2).

NL reacted that many land managers find it difficult to take measures against deterioration, due to the social impact they may cause.

COM stated that we need to rely on the guidance from the EU Court of Justice.

Looking at that Grune liga case, if the removal of a dyke would be needed to improve the status (removing pressures) of protected features in a site, and the dyke was there before the Directive entered into force Article 6(3) can be applied ex-post and it may conclude on the necessity to apply Article 6(4) if the relevant conditions are met. So if an existing infrastructure prevents us from reaching conservation objectives we can assess it against Article 6(3) and 6(4) if relevant conditions are met.

NL enquired what is the proportionality, how much can be considered as reasonable cost. Could we have a dialogue on specific cases?

COM reacted that it is open to dialogue when needed.

The new guidance on Article 6 will be soon published – and will specify that ideally compensation should be within the same site as best option, and elsewhere if that is not possible.

3) [...]